REPLY TO ADMIRAL SCHLEY'S BILL

Argument in Support of the Court's Findings.

NO REASON TO REOPEN

Judge Advocate Lemly and Solicitor Hanna have submitted to Secretary Long their report upon the bill of objections filed by Admiral Schley, through his counsel, to the findings of the Schley court of inquiry. In substance this report is an argument supplementary to the argument made by the writers before the court of inquiry. The principal points are an insistence upon their contention that the first report is the unanimous report of the court of inquiry; that the court was justified in rejecting Admiral Schley's evidence by the number of witnesses who took issue with him, and that there is no sufficient reason for a reopening of the case as requested by Ad-

December 20, 1901.

The report is as follows: Sir: A communication, dated the 18th in-stant, signed by Rear Admiral W. S. Schley and by Isidor Rayner and James Parker his counsel, objecting to the approval of the findings of the court of inquiry in the case of Rear Admiral Schley, and asking particularly that what the signers are pleased to term "the opinion of the marity of the court" be remitted to the court for further consideration, has been received by the department's reference, and is re-turned with the following statement: It is somewhat difficult to deal with this

paper on account of its general and nonspecific character, and sweeping, though unsupported, assertion of opinion by the applicant and his counsel that, in their judg-ment, the adverse finding of the court is no justified by the evidence. The paper might be dismissed as simply a not unexpected expression of dissatisfaction with an ad-verse judgment, but for the fact that it contains a number of misstatements, and, particularly, has woven throughout its en-tire structure an "inaccurate and misleaduse of the words "majority of the

The findings of fact and the opinion of the court of inquiry in the case of Admiral Schley, upon the more important and material points before it, were not reached by a majority of the members only, but by the entire court. The points of the precept upon which all the members of the court unite appear to be incontrovertibly established by the evidence; it is not understood how any other conclusions could have been reached upon them, and they constitute the essential features of the entire matter un-

der inquiry.

The evidence adduced before the court conclusively shows:

Under the fourth clause of the precept: That on the 26th of May, 1898, when within a few miles of Santiago, to which point he was under orders to proceed with the utmost dispatch, and where he was advised that the enemy's fleet was reported to be, and where, in fact, it actually was, Com-modore Schley turned about with the fleet under his command, consisting of some of the best vessels of the American navy, and headed for a home port, more than 700 miles distant, without sufficient reason or excuse for such action, taking with him at the same time the scouting vessels the department had sent there to watch the entrance, and leaving the port of Santiago. with the enemy's ships inside, unguarded. Upon this point the court says in its opin-ion: "He should not have made the retroturn westward with his squadron." grade turn westward with his squadron. In the face of the facts, the court could

action with his fleet, Commodore Schley was overtaken by a dispatch vessel bearing an urgent order, dated May 25, from the department, in substance directing him to proceed to Santiago, ascertain facts, report, not suffer the enemy to escape; that, ertheless, he continued to retreat with squadron, telegraphing to the Secretary 'It is to be regretted that the department's orders cannot be obeyed." The obeyed the Navy Department's order of May 25." Disobedience of an Important order in time of war having been thus vir-

the fifth clause of the precept

tually confessed, no other finding by the court was possible. Under the sixth clause of the precept: Commodore Schley's explanation of the retrograde movement and of his disobe-dience of orders as made at the time in a full telegram to the department on the subject was, in substance, shortage of coal and inability to coal the ships of his squad-ron from the collier. Evidence developed before the court shows that the squadron was at the time well equipped with coal and that coal had been and could be readily taken from the coilier. There was nothing for the court but to find as it did, that Commodore Schley's official reports regarding the coal supply and the coaling. regarding the coal supply and the coaling facilities of the flying squadron were "in-accurate and misleading." An attempt to justify by inaccurate and misleading official reports the turning homeward of a

powerful squadron at a critical period of war in disobedience of orders is a very

Under the seventh clause of the precept: The evidence adduced before the court shows that during the whole of the 20th and 30th of May the Cristobal Colon and other vessels of the Spanish squadron "lay in the entrance to Santiago harbor, Colon moored in plain sight, broadside to the entrance; that this harbor was de-fended by weak batteries, and that there was nothing to prevent the flying squadron from destroying the Colon, and perhaps other of the enemy's vessels, as they lay at anchor; that no effort whatever was made to do so on the 20th or on the 30th May, and that the attempt made on the first was brief and abortive. It is com-plained in paragraph 16 of the paper above mentioned that certain cautionary orders issued by the department were not "in the slightest degree" referred to by the court. These cautionary orders were introduced in evidence and fully discussed in argument. We contend that, quite obviously, they had no application to the conditions existing at Santiago on the 20th, 30th and 31st of May, and the finding of the court that Commodore Schley "should have endeavored to capture or destroy the Spanish vessels at anchor near the entrance of Santiago harbor on May 29 and 30," and that "he did not do his utmost with the force under his command to capture or destroy the Colon and other vessels of the enemy, which he attacked on May 31."

It may very properly be added that the claim of the applicant and counsel that the affair of May 31 was intended merely as a reconnaissance is not borne out by the evidence, for while testimony was in-troduced to show that it was so designated by Commodore Schley in conversation with a naval cadet and with a newspaper correspondent prior to entering upon it, none of the commanding officers of the vessels engaged was so advised, and no instruc-tions were given relative to the taking of notes of the engagement. The commanding officers were, on the contrary, informed, in effect, that the purpose was to destroy the Colon, and the officers in charge of the turrets of the Massachusetts were instructed accordingly by the commodore in per-

show that the court reached such conclu-

Under the ninth clause of the precept The evidence adduced before the court, from the bridge and from the engine room, showing that the Texas was stopped and backed "to avoid possible collision" with the Brooklyn is indisputable. That danger and delay to the Texas and loss of distance and position to the Brooklyn were the im-mediate results of the loop executed by the latter vessel, is too clearly shown to admit of doubt, and the finding of the court upon this point is fully sustained by the evi-

Under the tenth clause of the precept: It was established by the introduction before the court of the original letters themselves that Rear Admiral Schley obtained from Lieutenant Commander Hodgson, a junior officer who had served under him, a cate-gorical statement that a certain "colloquy" gorical statement that a certain "colloquy" reported in the public press to have taken place on the bridge of the Brooklyn July 3 between himself and Commodore Schley "never occurred," although Mr. Hedgson had assured the admiral that the facts as published were "substantially correct;" that the admiral gave out for publication

OBJECTION ANSWERED the categorical denial thus obtained, but did not publish an accompanying explanatory and qualifying letter, and that, subsequently, although repeatedly appealed to by Mr. Hodgson, Admiral Schley failed to

do justice in the matter.

All members of the court agree in finding that Admiral Schley "did injustice to Lieutenant Commander A. C. Hodgson in publishing only a portion of the correspondence which passed between them." The mere which passed between them." The mere perusal of the correspondence in this case is sufficient to show the correctness of this finding, and to convince any impartial reader that it could not be, and ought not

Upon the points above set forth, which Upon the points above set forth, which appear to embrace substantially the important matters covered by the inquiry, the court is united, and its findings are unanimous; they are sustained by the unimpeached and unimpeachable testimony of Commodore Schley's brother officers, who served with and under him; by official telegrams, letters and reports, and by the logs of the several vessels of his squadron, and it would, accordingly, be idle to remit these matters to the same body for reconsideration upon the same evidence.

It is not by any means intended here to say that the foregoing principal points cov-ered by the inquiry are the only points upon which the findings of the court are in all respects or substantially unanimous; because the truth is that the court is a unit upon all points, except those as to which the admiral expresses individual, but not in all cases contradictory views. It does not appear that any good purpose would be served by asking the court to reconsider

Aside from the "inaccurate and misleading" use of the term, "the majority of the court," the next prominent feature of the paper before us is the broad and sweeping fashion in which the applicant and his counsel declare that the court has "ignored" or "not considered" evidence. A sample sentence is the following from paragraph 27, although the paper is largely made up of such remarkable statements:
"The majority of the court have rejected the whole of the testimony offered on behalf of the applicant, and have not adverted to such testimony, and have entire-ly ignored the testimony of the applicant himself."

The court adjourned on the 7th of November last. Since that date its members have been, with rare exceptions, in daily session, morning and afternoon, examining the evidence before them. It was their sworn duty to consider and weigh that evi-dence, and the applicant and his counsel have no right to say that they have disre-

have no right to say that they have disregarded it.

But it is particularly urged in paragraphs 24 to 27, and elsewhere in the objection, that the testimony of the applicant himself has been ignored. This is merely stated, not shown. We contend that the testimony of the applicant alone, upon direct and cross-examination, establishes the important facts of general dilatoriness, vacillation, and want of energy at Cienfuegos and throughout the entire campaign from Key throughout the entire campaign from Key West to Santiago; the particulars of the retrograde movement, the disobedience of orders, of the inaccurate and misleading official reports; neglect and failure to destroy the Colon; injustice to Lieut. Comdr. Hodgson, and some minor matters. The facts of these points were all substantially confirmed by the applicant's own testimony; so that, far from ignoring such testimony; the court may have based its most

ny; so that, far from ignoring such testimony, the court may have based its most important findings thereon.

But the court has a perfect right, after weighing it, to ignore any testimony. Neither the applicant, his counsel, nor the judge advocate is to say what testimony it shall accept and what it shall reject. These matters may be argued, but their final determination is the province of the court.

It happened in the present inquiry that It happened in the present inquiry that the applicant while on the stand contra-dicted in whole or in part, directly or indidicted in whole or in part, directly or indirectly, testimony given by a majority of the witnesses. By way of particular illustration, Commodore Schley gave testimony at variance with that of the following witnesses: Rear Admirals Cotton, Evans and Taylor: Canis Sigshea McCalle Cook Following Canis Sigshea Canis Sigshea McCalle Cook Following hesses: Rear Admirais Cotton, Evans and Taylor; Capts. Sigsbee, McCalla, Cook, Fol-ger and Chadwick; Commanders Rodgers, Wainwright, Schroeder and Heliner; Lieut. Comdrs.. Hodgson, Southerland, Sharp, Marsh and Wood; Major Wood, U. S. M. C.; Lieut. Hood, Roys and others. In most cases these witnesses swore affirmatively to cases these witnesses swore affirmatively to incidents of which Commodore Schley had no recollection. Where the matter thus in dispute were of importance-and they generally were—it was not only the right, but the duty, of the court to accept the one and the duty, of the court to accept the one and the central idea that I wish to impress the other, and to report in harmony this evening is that this nation will be this evening in its citizenship just in proportion in its citizenship just in proportion case for reconsideration.

Some of the minor misstatements of fact above referred to as appearing in the paper under consideration are statements in paragraph one that there was no "specification" covering the voyage from Key West to Cienfuegos, when this point is, in fact, covered by the first and in part by the second clause of the precept; the complaint in paragraph two of the paper, that there was no place mentioned in the McCalla memorandum at which a camp of insurgents was located, when the fact is that the court does not say that there was such a place, but correctly paraphrases the mem-Some of the minor misstatements of fact the court does not say that there was such a place, but correctly paraphrases the memorandum; the statement that the McCalla memorandum was sent to Commodore Schley only for use in connection with the matter of batteries at Cienfuegos, and the statements in paragraphs four and elecstatements in paragraphs four and else-where that the judge advocate had substantially made certain admissions, whereas the fact is that the judge advocate made no admissions respecting matters under inquiry, excepting the feature under the first part of clause eight of the precept that the fly-ing squadron did not withdraw at night from the entrance to Santiago to a distance at sea, and that no personal cowardice on the part of the applicant had been estab-lished.

Paragraph twenty-six of the paper under consideration reads: consideration reads:

"The majority of the court have entirely failed to determine as to who was in command of the American naval forces engaged in the battle of Santiago, the finding of which fact was absolutely necessary in order to determine properly the first specification. which fact was absolutely necessary in order to determine properly the first specification of the precent as to the conduct of Commodore Schley in connection with the events of the Santlago campaign."

If it is true that a finding by the court upon this question was absolutely necessary in order to determine properly the first specification of the precept, then it must be stated that counsel for the applicant falled

stated that counsel for the applicant failed of their duty during the inquiry; several times in the course of the proceedings they brought this question into court and took it out again without giving the court op-portunity to rule upon it, once even withdrawing it so hastily as to interrupt the president of the court in a sentence that premised to be an adverse ruling. If they seriously believed, as they now state to be the case, that the matter of command on July 3 was essential to the applicant's in-July 3 was essential to the applicant's in-terest, it was their plain duty not only to bring the question before the court, but to insist upon a hearing there, and others in-terested should have been heard. To request terested should have been heard. To request that the court now rule upon it is to ask that another officer's interests be passed upon, to his possible prejudice, in his absence, and without a hearing—a thing intolerable, whomsoever may be concerned. In conclusion, we are satisfied that no good purpose would be served in remitting the proceedings or any of the features of this inquiry to the court. A more patient, exhaustive and painstaking hearing was never given; greater consideration was never extended to any officer before a military court of inquiry. No expense was spared, no convenience or facility denied, no courtesy refused. The applicant has had his day in court, and the judgment is against him. It is accordingly recommended that the proceedings be not returned, but ed that the proceedings be not returned, but that the matter be concluded by the depart-ment's approval of the unanimous findings

Judge Advocate, Court of Inquiry.

E. P. HANNA,

Assistant to Judge Advocate.

Appointments by Mr. Low. Mayor-elect Seth Low of New York city announced the following appointments last night: President of the department of taxes and assessments, James L. Wells; commissioner of docks, McDougall Hawkes; fire commissioner, Thomas Sturgis; commis-sioner of parks for Manhattan and Rich-

sioner of parks for Manhattan and Richmond and president of the park board, William R. Willcox; commissioner of corrections, Thomas W. Hynes.

Mr. Hawkes is a republican. He is a mining engineer, having graduated from Columbia University in 1885. Mr. Sturgis is also a republican and a member of a firm of builders of New York city. He was civil service commissioner and fire commissioner under the Strong administration. Mr. Willcox was the republican candidate for Congress in the thirteenth congressional district in 1900. He is a lawyer. Mr. Hynes was born in Ireland in 1847. He came to this country in 1850 with his parents, who settled first in Massachusetts and then in New York city. Mr. Hynes is a democrat.

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APPEALS FOR HIS PEOPLE.

Booker T. Washington Speaks Before the Outlook Club. A dispatch to the New York Tribune from

Montclair, N. J., yesterday says: Before the Outlook Club tonight one of the largest audiences that has ever attended a regular session of the club heard Booker T. Washington. Mr. Washington's subject was "The Citizenship of the American Negro. He said in part:

It should always be borne in mind that as a race the negro did not force himself into this country, but was brought here in the face of his most earnest protest. This fact alone gives the negro a claim upon the sympathy, the good-will, the forbearance and generosity of the white man that no other race can have. In the next place, it is of the highest importance that the white race appreciate the rare opportunity which is afforded it to lift itself up by lifting others. I have sometimes thought that one of the shiests of the Supreme Ruler in placing the objects of the Supreme Ruler in placing what the world calls a weak and unfortunate race in the midst of a seemingly strong and fortunate one is to give the one the opportunity to continually grow in breadth of thought, in the spirit of tolerance and generosity of purse, by assisting the other. There is no surer sign of advanced civilization than the disposition to reach down and help up the unfortunate of another race. But for the presence of the impotent and unfortunate in our midst, whose very presence is a constant call and reminder presence is a constant call and reminder that to do and to live for others is greater than a life centered upon self, I should have great fear for the future of our own land. It is always easy for a race to yield to the temptation of crushing and with-holding opportunities from a weak raceto be deceived by the false doctrine that it lifts itself up in proportion as it keeps

this evening is that this nation will be strong in its citizenship just in proportion as in its growth it lifts up the nearly ten millions of black people. It will grow weak in proportion as it yields to the temptation of neglecting or degrading these people of African descent. Assistance elevates the individual extending it; oppression degrades the individual guilty of it. If we grades the individual guilty of it. If we lift others we climb—the future is certain. If we neglect others the future is uncertain. If we let love of money, commercialism luxury and selfishness tempt us to neglect our duty to our less fortunate brother, then it will prove now, as often in the past, that "pride cometh before a fall." In a word, the white man in this country can use the African as a means for his eleva-tion or he can use the African as a means

for his own degradation.

But the white man not only has a part But the white man not only has a part and a responsibility in the making of an American citizen out of the negro, but the most important part is to be played by the negro himself. However powerful may be the outside influences brought to bear upon a race, the race itself cannot be permanently lifted unless it has within itself the elements of progress and civilization. We may guide, stimulate and assist a race, but unless it has within itself the inherent power to respond to outside influences all outside effort will count for little. What lesson has the past and present for us re-garding the ability of the race to develop itself? In part answer, it is hardly possible for those in this generation to appreciate the fact that less than one hundred and fifty years ago negroes were sold as and fifty years ago negroes were sold as slaves in the market place of more than one town in New England. Less than fifty years ago, because forbidden by law or custom, there was practically no school in all our southland into which a negro child could enter. Now there is not a single county in a single state where a school. county in a single state where a school cannot be planted for the benefit of the blackest child in that county. In order that this growth may be fostered, and the feeling toward him on the part of the white race be changed for the better as rapidly as possible, there are one or two simple but as possible, there are one or two simple but fundamental essentials of growth that we cannot disregard. We must ever keep in mind that our future recognition is largely within our own hands. In all history no race that has been able to continually son race that has been able to continually con-tribute materially, mentally or spiritually to the welfare of the world has been per-manently left without reward and encour-

It is not what we say of good concerning ourselves, or what others may say of evil regarding us in the long run that is going regarding us in the long run that is going to hinder or help us. It is going to be what we actually accomplish—by our fruits men will judge us. As a race we must learn not to be deceived or discouraged by the superficial or the temporary. The real question with us as a race is whether each year we are gaining in property, intelligence, high character and in the confidence and respect of our neighbors, black and white.

Suffering Among Settlers. A dispatch from Guthrie, Okla., says: Every road leading into the new country is still lined with prospective settlers. Generally these are men in poor circumstances financially, who are moving their families into this region to improve their condition. This is the class of people who have suf-

fered greatly as the result of the recent cold wave. Without food and generally without money and in a country sparsely settled, they have starved and frozen, in many cases death resulting among the children. Men who have seen these people report the sights the most pitiable they ever witnessed. The cold weather has also developed several cases of smallpox in every town and city in the two territories.

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